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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 PAUL D. ASWEGAN,

10 Plaintiff,

11 vs.

12 TED D'AMICO, et al.,

13 Defendants.  
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Case No. 2:06-CV-01559-JCM-(RJJ)

**ORDER**

15 Presently before the court are Magistrate Judge Johnston's report and recommendations,  
16 recommending that the defendants' second motion to dismiss (# 23) be granted. The defendants  
17 filed their first motion to dismiss (#20) on May 18, 2007. The response to that motion was due by  
18 June 5, 2007. The defendants filed their second motion to dismiss on July 6, 2007. Responses to that  
19 motion were due by July 24, 2007.

20 Local Rule 7-2 requires that points and authorities in response to a motion be filed and  
21 served by an opposing party within fifteen days after service of the motion. The failure of a moving  
22 party to file points and authorities in response to any motion shall constitute a consent to the  
23 granting of the motion.

24 Failure to follow a district court's local rules is a proper ground for dismissal. *Ghazali v.*  
25 *Moran*, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Before dismissing the action, the district court is required to  
26 weigh several factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's  
27 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
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1 disposition of cases o[n] their merits; and (5) the availability of less drastic sanctions.” *Id.*, quoting  
2 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9<sup>th</sup> Cir. 1986).

3 Plaintiff Paul Aswegan filed the complaint in this action on January 26, 2007, while in  
4 custody of the Nevada Department of Corrections (“NDOC”). He continued to file motions in this  
5 action through April 30, 2007. On May 15, 2007, he was discharged from NDOC incarceration.  
6 Since that time, the plaintiff has failed to file any motions or responses with the court, and has  
7 failed to notify the court of a valid forwarding address. Mail was returned as undeliverable to him  
8 on May 29, 2007, and on July 13, 2007.

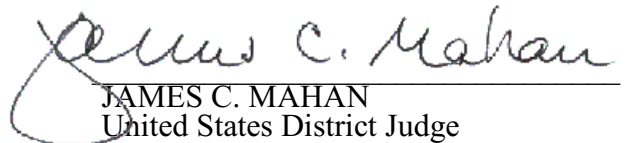
9 Local Rule of Special Proceedings and Appeals 2-2 states that the plaintiff shall immediately  
10 file with the court written notification of any change of address, and failure to do so may result in  
11 dismissal of the action with prejudice.

12 Upon consideration of Magistrate Judge Johnston’s report and recommendations, the  
13 defendants’ motions, the plaintiff’s failure to comply with the local rules, and the factors set forth in  
14 *Ghazali v. Moran*,

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Magistrate Judge  
16 Johnston’s report and recommendations (#26) are AFFIRMED in their entirety.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants’ motions to  
18 dismiss (## 20, 23) , be and the same hereby are, GRANTED, and that the plaintiff’s complaint (#  
19 5) , be and the same hereby is, DISMISSED with prejudice.

20 DATED this 23<sup>rd</sup> day of January, 2008.

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23 JAMES C. MAHAN  
24 United States District Judge  
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